



7590-01-P

## **NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 050-00284, 070-01374, 030-32322, and 030-38726; NRC-2019-0156]**

### **In the Matter of Idaho State University**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Confirmatory order; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) issued a confirmatory order to Idaho State University on May 2, 2019. The purpose of the confirmatory order was to document commitments made as part of a settlement agreement between Idaho State University and the NRC to address inadequate management oversight for Idaho State University's radiation protection program and a failure to prioritize resources for the radiation safety staff such that their responsibilities could be implemented. The confirmatory order also documented commitments to address Idaho State University's failure to effectively control radioactive materials in its possession, exhibited by multiple violations identified during inspections and the inadequate extent of condition review related to the violations involving a lost source.

**DATES:** The confirmatory order was issued and effective on May 2, 2019.

**ADDRESSES:** Please refer to Docket ID **NRC-2019-0156** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2019-0156**. Address questions about NRC dockets IDs in Regulations.gov to Jennifer Borges; telephone: 301-287-9127; e-mail:

Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System**

**(ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The Confirmatory Order to Idaho State University is available in ADAMS under Accession No. ML19122A123.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Casey Alldredge, Region IV, U.S. Nuclear Regulatory Commission, Arlington, TX 76011-4511; telephone: 817-681-3027, e-mail: [Casey.Alldredge@nrc.gov](mailto:Casey.Alldredge@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The text of the Order is attached.

Dated at Rockville, Maryland, this 26<sup>th</sup> day of July, 2019.

For the Nuclear Regulatory Commission.

Scott A. Morris,  
Regional Administrator,  
NRC Region IV.

**ATTACHED – Confirmatory Order.**

## I

Idaho State University (ISU or licensee) is the holder of the licenses identified in the Attachment to this Confirmatory Order issued by the U.S. Nuclear Regulatory Commission (NRC or Commission), in accordance with the Atomic Energy Act of 1954, as amended, and Parts 30, 40, 50, and 70 of Title 10 of the *Code of Federal Regulations* (10 CFR).

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on March 27, 2019.

## II

On January 10, 2019, the NRC issued Inspection Report 030-32322/2018-001 (Agencywide Documents Access and Management System (ADAMS) Accession ML19011A015) to ISU which documented the identification of one apparent violation that was considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The apparent violation of 10 CFR 30.34(i) involved the failure to secure two portable gauges containing radioactive sources to prevent unauthorized access or removal.

By letter dated January 10, 2019, the NRC notified ISU of the results of the inspection with an opportunity to: (1) attend a predecisional enforcement conference or (2) participate in an ADR mediation session in an effort to resolve this concern.

In response to the NRC's offer, ISU requested the use of the NRC's ADR process. On March 27, 2019, the NRC and ISU met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any

differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

### III

During the ADR session, ISU and the NRC reached a preliminary settlement agreement. The elements of the agreement included the list of violations, corrective actions that ISU already completed, and future agreed upon actions as follows:

**Severity Level IV violations in NRC Inspection Report 030-32322/2018-001:**

- A. Failure to ensure that each container of licensed material bore a durable, clearly visible label that provided sufficient information to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures;
- B. Failure to conduct a physical inventory every 6 months to account for all sealed sources possessed under the license;
- C. Failure to permit access to contamination areas only when staff were under the supervision of senior Environmental Health and Safety Department personnel;
- D. Failure to clearly document surveys so that others can understand them and removed postings in a decommissioned lab without approval of the radiation safety officer;
- E. Failure to transfer radioactive materials to another organization only when authorization was obtained from the radiation safety officer;
- F. Failure to post each area or room in which there was used or stored an amount of licensed material exceeding 10 times the quantity of such material specified in Appendix C to 10 CFR Part 20 with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)";

- G. Failure to prominently post an area to control the spread or accidental intake of radioactive materials as a contamination controlled area;
- H. Failure to conduct routine radiological surveys evaluating both the strength of any radiation fields present and as appropriate, the potential presence of radioactive material contamination at a regular periodicity, no less than monthly in labs where dispersible radioactive material is used;
- I. Failure to ensure that: (1) potential radiation exposures from any source, or within any facility, were evaluated by the radiation safety officer or designee to determine protection and monitoring requirements; (2) work areas where radioactive materials had been used and storage areas for these materials were surveyed for external exposure rates whenever changes were made in the quantities, locations or shielding; and (3) user laboratory survey frequencies were daily when radioactive materials were in use or as otherwise specified by Environmental Health and Safety;
- J. Failure to test the fume hoods at least annually; and
- K. Failure to periodically (at least annually) review the radiation protection program content and implementation.

**Corrective actions taken by Idaho State University include :**

- A. Permanent transfer of five portable gauges out of ISU inventory to authorized recipients.
- B. Specific corrective actions and commitments of programmatic changes described in the ISU letter to the NRC, dated February 11, 2019, ADAMS Accession ML19044A380.

**The elements of the agreement, as signed by both parties, consist of the following:**

### Third-Party Audit and Causal Evaluation

- A. Within 90 days of the issuance date of the Confirmatory Order, one or more third-party person(s) selected by ISU will complete a 100 percent source inventory and submit the results in writing to the NRC and the independent auditor identified and approved in Condition B.
- B. Within 30 days of the issuance date of the Confirmatory Order, ISU will submit to the NRC for approval the resumé of one or more third-party persons knowledgeable in the various types of licensed activities at ISU. The person(s) must also have appropriate experience and knowledge of performing audits of the various licensed activities at ISU, performing causal analyses, and development of corrective action plans based on the audit findings and the cause evaluations.
- C. The independent third-party person(s) will:
  - 1. Within 150 days of the NRC's approval of the third-party person(s), complete an independent audit of NRC licensed activities across all four NRC licenses (broad scope, production, research and test reactor, and special nuclear material) and provide a report to the NRC of the audit findings. The audit will include, at a minimum: observation of activities, knowledge interviews of ISU workers and staff, records review, review of the radiation safety committee activities, and approval of authorized users and their uses of licensed material. Over the course of the audit, potential findings must be discussed with ISU management in order to allow ISU to provide any additional information necessary for the auditors to consider in assessing the validity of the finding.

2. Within 60 days after completing the audit above, complete a causal evaluation of the audit findings and NRC enforcement actions from January 1, 2017, to the issuance date of the Confirmatory Order. The independent third-party person(s) may also conduct causal evaluations as needed to determine causes of specific significant issues. The third-party person(s) shall discuss their causal methodologies and recommended corrective actions with ISU management in order to allow ISU to provide any additional information necessary for the auditors to consider in assessing the validity of their causal evaluations.

#### Corrective Actions

- D. Within 60 days of receiving the third-party person(s) causal evaluation and recommended corrective actions, ISU shall submit to the NRC its corrective action plan with a schedule for completion of the actions it takes. If ISU determines it will not adopt one or more recommended corrective actions from the third-party person(s), ISU must identify to the NRC, in its plan, the basis for not accepting the third-party recommendation(s). All corrective actions must be completed within 18 months of the corrective action plan submittal to the NRC.
- E. Within 90 days of the issuance date of the Confirmatory Order, ISU shall develop a procedure to enhance management oversight by requiring radiation safety committee members to participate in radiation safety program audits.

#### Effectiveness Review

- F. Within 6 months after submitting the corrective action plan to the NRC and every 6 months thereafter (subject to Condition G), ISU will perform an effectiveness review of its corrective actions. The review must include at least one independent third-party person on the assessment team. Within 30 days of

completion of the effectiveness review, ISU will submit a report to the NRC with the results of its review, the status of the corrective action plan, and the revisions/modifications to the corrective action plan to address any findings.

- G. Within 6 months after completion of all corrective actions, ISU will perform a final effectiveness review and submit the report to the NRC.

#### Administrative Items

- H. The NRC and ISU agree that the above elements will be incorporated into a Confirmatory Order.
- I. The NRC will consider the Confirmatory Order an escalated enforcement action with respect to any future enforcement actions.
- J. In consideration of the elements delineated above, the NRC agrees not to issue a Notice of Violation to ISU for the apparent violation discussed in NRC Inspection Report 030-32322/2018-001, dated January 10, 2019, and not to issue an associated civil penalty.

Based on the completed actions described above, and the commitments described in Section V below, the NRC agrees to not pursue any further enforcement action based on the apparent violation identified in the NRC's January 10, 2019, letter.

On April 29, 2019, ISU consented to issuing this Confirmatory Order with the commitments, as described in Section V below. Idaho State University further agreed that this Confirmatory Order is to be effective upon issuance, the agreement memorialized in this Confirmatory Order settles the matter between the parties, and that it has waived its right to a hearing.

#### IV

I find that ISU's actions completed, as described in Section III above, combined with the commitments as set forth in Section V are acceptable and necessary, and



conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that ISU's commitments be confirmed by this Confirmatory Order. Based on the above and ISU's consent, this Confirmatory Order is effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30, 40, 50, and 70, IT IS HEREBY ORDERED THAT LICENSE NOS. 11-27380-01, 11-27380-04, SNM-1373, AND R-110 ARE MODIFIED AS FOLLOWS:

Third-Party Audit and Causal Evaluation

- A. Within 90 days of the issuance date of the Confirmatory Order, one or more third-party person(s) selected by ISU will complete a 100 percent source inventory and submit the results in writing to the NRC and the independent auditor identified and approved in Condition B.
- B. Within 30 days of the issuance date of the Confirmatory Order, ISU will submit to the NRC for approval the resumé of one or more third-party persons knowledgeable in the various types of licensed activities at ISU. The person(s) must also have appropriate experience and knowledge of performing audits of the various licensed activities at ISU, performing causal analyses, and development of corrective action plans based on the audit findings and the cause evaluations.
- C. The independent third-party person(s) will:
  - 1. Within 150 days of the NRC's approval of the third-party person(s), complete an independent audit of NRC licensed activities across all four NRC licenses (broad scope, production, research and test reactor, and special nuclear

material) and provide a report to the NRC of the audit findings. The audit will include, at a minimum: observation of activities, knowledge interviews of ISU workers and staff, records review, review of the radiation safety committee activities, and approval of authorized users and their uses of licensed material. Over the course of the audit, potential findings must be discussed with ISU management in order to allow ISU to provide any additional information necessary for the auditors to consider in assessing the validity of the finding.

2. Within 60 days after completing the audit above, complete a causal evaluation of the audit findings and NRC enforcement actions from January 1, 2017, to the issuance date of the Confirmatory Order. The independent third-party person(s) may also conduct causal evaluations as needed to determine causes of specific significant issues. The third-party person(s) shall discuss their causal methodologies and recommended corrective actions with ISU management in order to allow ISU to provide any additional information necessary for the auditors to consider in assessing the validity of their causal evaluations.

#### Corrective Actions

- D. Within 60 days of receiving the third-party person(s) causal evaluation and recommended corrective actions, ISU shall submit to the NRC its corrective action plan with a schedule for completion of the actions it takes. If ISU determines it will not adopt one or more recommended corrective actions from the third-party person(s), ISU must identify to the NRC, in its plan, the basis for not accepting the third-party recommendation(s). All corrective actions must be completed within 18 months of the corrective action plan submittal to the NRC.

- E. Within 90 days of the issuance date of the Confirmatory Order, ISU shall develop a procedure to enhance management oversight by requiring radiation safety committee members to participate in radiation safety program audits.

Effectiveness Review

- F. Within 6 months after submitting the corrective action plan to the NRC and every 6 months thereafter (subject to Condition G), ISU will perform an effectiveness review of its corrective actions. The review must include at least one independent third-party person on the assessment team. Within 30 days of completion of the effectiveness review, ISU will submit a report to the NRC with the results of its review, the status of the corrective action plan, and the revisions/modifications to the corrective action plan to address any findings.
- G. Within 6 months after completion of all corrective actions, ISU will perform a final effectiveness review and submit the report to the NRC.

The NRC will consider the Confirmatory Order an escalated enforcement action with respect to any future enforcement actions. In consideration of the elements delineated above, the NRC agrees not to issue a Notice of Violation to ISU for the apparent violation discussed in NRC Inspection Report 030-32322/2018-001, dated January 10, 2019, and not to issue an associated civil penalty. This agreement is binding upon successors and assigns of ISU. The Regional Administrator, Region IV may, in writing, relax or rescind any of the above conditions upon demonstration by ISU or its successors of good cause.

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than ISU, may request a hearing within 30 calendar days of the date of issuance of this Confirmatory Order. Where good cause is

shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter "petition"), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at <http://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document.

The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's Public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff.

Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an Order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "Cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires

submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the *Federal Register* and served on the parties to the hearing.

If a person (other than ISU) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission

Scott A. Morris  
Regional Administrator  
NRC Region IV

Dated this 2<sup>nd</sup> day of May, 2019

[FR Doc. 2019-16368 Filed: 7/31/2019 8:45 am; Publication Date: 8/1/2019]